as a person that provides "telephone exchange service or exchange access."[38] Data transmissions over xDSL connections are neither telephone exchange service nor exchange access, so when U S WEST provides such data services, it is not a "local exchange carrier" subject to the obligations of Section 251(c).

The 1996 Act defines "telephone exchange service" as "(A) service within a telephone exchange, or within a connected system of telephone exchanges . . . operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange . . . or (B) comparable service provided through a system of switches, transmission equipment, or other facilities."[39] The data services U S WEST seeks to provide would not begin or end on the circuit switched facilities within a single telephone exchange or within a connected system of exchanges. Nor would U S WEST's data services be "comparable services" within the meaning of part (B) of the definition. The Commission has held that a service is "comparable" within the meaning of that provision if it involves the provision of "local, two-way switched voice service" or if it could become a "true economic

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respect to facilities used to provide local exchange services or exchange access); Domestic Fixed-Satellite Transponder Sales, Memorandum Opinion, Order and Authorization, 90 FCC 2d 1238, 1239 ¶ 1 (1982) (Commission classified domestic satellite operators as common carriers, but allowed them to provide a limited number of transponders on a noncommon carrier basis).

[38] 47 U.S.C. § 153(26). See also id. § 251(h) (defining "incumbent local exchange carrier" as a local exchange carrier that, on the date of enactment of the 1996 Act, provided telephone exchange service in a given area).

[39] 47 U.S.C. § 153(47).

substitute for wireline local exchange service in the future."[40] U S WEST's advanced data services would not involve two-way voice transmissions and hence would not satisfy these criteria. It is equally clear that such data services do not qualify as "exchange access," defined in the 1996 Act as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services."[41] Therefore, insofar as it provides advanced data services, U S WEST is not a "local exchange carrier" and should not be subject to Section 251(c).

In addition, even if Section 251(c) did apply to advanced data services, the Commission has authority under Section 251(d)(2) to determine "what network elements should be made available" for purposes of Section 251(c)(3). In particular, this provision gives the Commission the power to decide that specific facilities that qualify as bona fide network elements nonetheless should not be subject to the 1996 Act's unbundling requirements. Section 251(d)(2) provides certain standards that the Commission "shall consider, at a minimum" in making its determination -- phrasing that clearly indicates that the Commission may consider other factors as well. Therefore, the Commission has discretion to consider issues relating to advanced telecommunications deployment as a significant factor in deciding whether to make specific elements subject to the unbundling requirements of Section 251(c)(3). The Commission should consider such issues here, and for the

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[40] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 15499, 15999-16000 ¶ 1013 (1996).

reasons set forth in U S WEST's Petition and these Reply Comments, should conclude that such issues weigh heavily against requiring U S WEST to unbundle the elements used in the provision of advanced data services.

The Commission also has authority under 47 U.S.C. Section 153(25)(B) to permit the modification of LATA boundaries. As Ameritech Corporation has explained in its filings in CC Docket No. 98-36, the Commission could use this authority to expand and combine current LATAs with respect to the provision of advanced data services, thus enabling ILECs to offer such services across current boundaries. Some commenters argue that such action would eliminate LATA boundaries and therefore would be beyond the scope of the Commission's modification authority.[42] However, far from eliminating LATA boundaries, the relief proposed by Ameritech would have no impact whatsoever on the LATA boundaries and associated restrictions applicable to traditional two-way voice telephone service. As discussed below, U S WEST seeks relief with respect to advanced data services only, and has made a firm commitment that it will not use such relief to evade restrictions on the provision of voice services. In particular, U S WEST is fully committed to the Section 271 process for obtaining general authorization to offer interLATA services: It already has submitted a Section 271 application for authorization in Montana, and it plans to submit applications in all of the states in its region by the end of the year. Thus, changing LATA boundaries

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[41] 47 U.S.C. § 153(16).

[42] See, e.g., Opposition of MCI Telecommunications Corporation at 37-38; Consolidated Opposition of WorldCom at 29.

with respect to advanced data services would be a narrowly-tailored modification of the current LATA regime, not a de facto "elimination" of that regime.

III. U S WEST IS WILLING AND ABLE TO BUILD AN ADVANCED DATA INFRASTRUCTURE CONNECTING MANY COMMUNITIES THAT THE CARRIERS NOW IN THE MARKET ARE REFUSING TO SERVCE

In its Petition, U S WEST explained how existing network providers are risking dividing the country into information "haves" and "have nots." While these carriers may be racing to offer advanced data services in urban areas and to deploy bandwidth on backbones connecting the largest cities, they have, as even AT&T concedes in its comments,[43] left smaller and rural communities behind. In U S WEST's region, only big cities such as Seattle, Denver, Minneapolis, and Phoenix have local access to a high-speed (DS-3 or greater) POP on the Internet backbone; fully seventeen of the twenty-seven LATAs in the region lack any kind of high-speed POP at all. ISPs and other customers outside these big cities cannot get

[43] The only commenter that addresses in any detail the deployment of infrastructure specifically in U S WEST's region is ELI); however, ELI's comments contain more name-calling than substance. ELI accuses U S WEST of trying to mislead the Commission be failing to discuss ELI's network. It is true that U S WEST did not include a specific map of ELI's high-speed POP in its network-by-network maps of the largest national backbones, simply because ELI is a relatively small provider. But U S WEST did include ELI's network in Illustration 9, the aggregated map showing which LATAs contain any Internet high-speed POP at all. U S WEST Petition at 19. More importantly, even the information that ELI provides about its own network illustrates the very point that U S WEST was making. Although ELI's Exhibit B depicts every city where ELI has deployed some kind of router or other backbone facility, it does not tell the capacity of those facilities. That information is contained in ELI's Exhibit A, which copies the same Boardwatch survey that U S WEST used. And that survey reveals the key fact: the only cities in U S WEST's region in which ELI has deployed high-speed (DS-3 or great) POPs are Phoenix, Portland, Salt Lake City and Seattle. See ELI Comments at Exhibit A, p.2. In other words, just like every other carrier, ELI is serving smaller communities with low-capacity facilities, if it serves them at all.

a high-speed connection to the Internet unless they pay to backhaul their traffic hundreds of miles to one of these POPs at a cost which sometimes is prohibitive. The existing carriers' failure to build a data infrastructure that serves smaller and rural communities has left these areas with connections to the information superhighway that are more expensive, slower, and less reliable than those available in urban areas -- and no commenter provides data to the contrary. U S WEST demonstrated that if it were given permission to operate an interLATA data network, it could serve these "have nots" by using its facilities to build a backbone reaching deeper into the West and Midwest with greater bandwidth than any existing network.

In response, the commenters who would keep U S WEST out of the market contend that the backbone marketplace is currently extremely competitive with few barriers to entry, and that more carriers are rushing to deploy greater bandwidth and build intercity networks than ever before. This is true. But the commenters say nothing about where this activity is occurring. The carriers that are adding capacity are doing so in the same large cities that are already being served, and their intercity backbones will continue to bypass the smaller communities that Congress directed the Commission to ensure do not get left behind. For example, the new national network that QWEST is building and that many commenters cite will still leave five of U S WEST's states untouched.[44] Likewise, the much-cited

[44] See http://www.qwest.com/network/Mainmaps.html. Even when complete, QWEST's network will not reach Idaho, Montana, Wyoming, North Dakota or South Dakota.

national backbone that IXC Communications, Inc. has recently activated only reaches two of U S WEST's fourteen states, Arizona and New Mexico, and will connect only another four states by the end of 1999.[45]

In addition, as explained in more detail in the next section, the commenters' argument is backwards. If competition in the market for backbone is as robust as they claim, that is a reason not to fear the entry of a new competitor -- especially one, such as U S WEST, that is willing and able to serve a part of the market that existing competitors are ignoring. Ironically, the carriers who are fighting most vociferously to keep U S WEST out of this market -- carriers such as WorldCom, Sprint, MCI and AT&T -- are the very ones who now refuse to deploy adequate infrastructure to "all Americans."

U S WEST already has an extremely large investment in facilities deployed throughout its service region -- facilities that pass through and could connect the smaller and rural communities that current backbone providers are ignoring. Illustration 1, for example, depicts U S WEST's network facilities in the parts of Montana where it is the ILEC. The map also shows the essential public institutions (law enforcement agencies, hospitals, universities, schools, and libraries) that are passed by these facilities, and that could potentially receive advanced data services from U S WEST if it were allowed to connect these facilities across LATA boundaries into a regional backbone. But regulatory barriers now prevent U S WEST from building this backbone; as Illustration 2 shows (see Attachment B),

[45] See, http://www.ixc-comm.com.

U S WEST's network must stop at the LATA boundaries, meaning that it cannot (for example) connect a small hospital in Bozeman with a larger one in Butte, only 80 miles away.

While U S WEST's initial filing focused on the infrastructure disparities between urban and rural areas, commenters such as the National Black Chamber of Commerce raise a slightly different concern. This commenter asks whether, even within large cities, minority communities will have access to the advanced data services that are the subject of this proceeding. This is a subject that has clearly concerned the Commission as well.[46] U S WEST notes that its service to minority and other communities, including advanced telecommunications services, is extensive. Illustrations 3 and 4 (see Attachment B), for example, map exactly where some of the largest competitive local exchange carriers ("CLEC") and backbone providers have deployed fiber in downtown Denver and the greater metropolitan area.[47] Illustrations 5 and 6 (see Attachment B) show where U S WEST's DSL deployment in Denver will reach.

These maps document clearly that, as is the case with advanced service to rural America, advanced service to minority communities is likewise most closely tied to U S WEST's plans and, to a large extent, to the instant Petition. In Denver, the example pointed out in our Illustrations, advanced telecommunications services

[46] A large part of the NBCC's comments makes unsubstantiated and, indeed, erroneous allegations about U S WEST's contracting practices that are unrelated to this proceeding and are the subject of separate litigation between NBCC and U S WEST.

are likely to reach minority communities only through U S WEST, either directly or through ISPs or CLECs using U S WEST's facilities and services. Our point is really very simple: if the promise of advanced telecommunications services to all Americans is to be realized, it is imperative that the Commission recognize and exercise its full authority under Section 706 of the 1996 Act.

IV. NO COMMENTER HAS PRESENTED ANY EVIDENCE THAT GRANTING U S WEST'S PETITION WOULD HARM COMPETITION

The primary policy concern raised by the opponents of U S WEST's Petition is that U S WEST will be able to leverage its market power in voice services into the data marketplace. Many commenters cite the bogeyman of a new RBOC broadband monopoly as the reason to keep U S WEST out of data services.[48] This is simply fearmongering. None of the commenters explains how exactly a carrier would go about using its power in the voice market to monopolize the highly (indeed, atomistically) competitive market for data services.[49] Moreover, there is no reason

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[47] Affidavits from the authors of the Denver and Montana maps explaining their methodology are attached as Attachment B.

[48] See, e.g., Comments of United Homeowners Association, et al., to Bell Atlantic's Petition.

[49] AT&T is one of the only commenters that even attempts to spell out how this leveraging might take place, and its theory is patently ridiculous. AT&T suggests that once an ILEC builds a DSL connection to a subscriber, the ILEC will migrate all of the subscriber's services onto that connection, encouraging the subscriber to get rid of her standard telephone lines and leaving no other path into her premises. AT&T Comments to Bell Atlantic's Petition at 15. To describe this argument is to answer it. DSL services supplement, and do not obviate, voice services. The "DSL connection" and POTS line are one and the same, and U S WEST accepts that it must continue to make loops available on an unbundled basis. And as explained in greater detail in Section V, U S WEST has committed not to market IP voice services or convert its voice offerings into data services until it has Section 271 authority.

to think this would be possible.

U S WEST is entering the in-region data services market -- already containing hundreds of competitors -- with a zero market share. It is, in fact, the only company in its region that is currently not allowed to build a data backbone. Contrary to what Sprint suggests,[50] control of the local loop is not essential to deploying data services: the activities of the hundreds of backbone carriers, the competitive providers of DSL services, the increasing numbers of carriers offering wireless and cable broadband services, and U S WEST's thriving data business outside its service region all illustrate that one does not need to own the local loop to compete in the data marketplace. And as for the loop itself, U S WEST has made clear that it is not seeking to lift its obligation to make unbundled local loops available to other carriers.

U S WEST's Petition -- which seeks limited relief from requirements to unbundle non-bottleneck facilities and resell advanced telecommunications services at a discount -- is carefully structured to avoid having any anticompetitive effect. In fact, U S WEST's Petition will benefit CLEC and ISPs in less urban areas by providing them with high-speed connections to the Internet and various options for offering their own DSL services. Moreover, the Section 251 unbundling and Computer III requirement which will remain in effect are more than sufficient to ensure that U S WEST's competitors are not hampered in their provision of advanced data services. Thus, the competitive benefits of U S WEST's Petition far

[50] Sprint at 9-10.

outweigh the unfounded concerns of the opposing commenters.

A. Internet Backbone

There is a fundamental contradiction in most of the oppositions. On the one hand, they claim that the marketplace for data backbone is so robustly competitive, with hundreds of carriers fighting fiercely with one another to provide services, that U S WEST's entry into this market is unnecessary.[51] At the same time, they protest that this market is so fragile that U S WEST will immediately monopolize it if it enters. Both cannot be true.

The truth is that the market is robustly competitive, and sufficiently strong as to be able to absorb U S WEST's entry, but that existing competitors have done a terrible job bringing their services to "all Americans." As discussed in the previous section, grant of U S WEST's Petition would alleviate the severe shortage of high-speed Internet connections within its fourteen-state region.[52] The effect of this acute infrastructure shortage is that ISPs outside of urban areas cannot obtain affordable high-speed access to the Internet. Rather, they must choose from two undesirable options.

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[51] MCI at 40 "Competition to provide Internet backbone services is as vibrant as competition to provide the interexchange telecommunications services supported by telecommunications facilities. Factors such as competing providers, low barriers to entry, continue exponential growth, and a protocol designed to provide flexibility and accommodate change, serve to ensure that no one company could conceivably dominate the provision of Internet backbone services." WorldCom at 42 "Bell Atlantic's petition . . . all but ignores all the many existing and new backbone providers that are entering the market and expanding at lightning speed to offer service to countless ISPs serving residential retail end users."

[52] See, supra Section III.

First, ISPs in non-urban areas can purchase direct access from a so-called Tier 1 provider, but this means that they also must buy an access line or "pipe" to the provider's POP. There are only eleven cities in U S WEST's entire territory where such POPs are located. This pipe can be a point-to-point circuit which is priced based on miles traveled, or it can be a Frame Relay circuit which includes both a mileage charge to an interexchange carrier's POP and a port charge. Depending on the distance to the provider's POP -- which can be hundreds of miles in U S WEST's territory -- and the amount of bandwidth required, this option can be prohibitively expensive.

Second, ISPs in non-urban areas can buy access from another local ISP who has already purchased a pipe to the internet. This option provides a more cost-effective means of getting to the internet, but it often results in a pipe that is oversubscribed with users. As a result, the ISP's customers often are faced with chronic congestion problems.

If U S WEST is granted interLATA relief for its data backbone, it will be able to offer non-urban ISPs additional, cost-effective options for obtaining high-speed access to the Internet. Because U S WEST already has an extensive Frame Relay network within its territory, a rural ISP would not have to pay the often cost-prohibitive backhaul charges that they are faced with today. U S WEST will deploy a new interLATA frame relay port (the "706 port"). ISPs in rural areas can use this new service to connect to high speed Internet hubs cost effectively. There is a set charge for the 706 port no matter where the ISP is located with U S WEST's Frame Relay service area, which means that an ISP in Colorado Springs, Colorado pays

the same price as an ISP in Helena, Montana. Once the high speed data connection is established, the rural ISP can purchase Internet backbone services from U S WEST or directly from a Tier 1 ISP which also connects to the high speed data service.

B. DSL Services

The opposing commenters essentially ignore the internet backbone shortage issue and focus on access to DSL services. While these commenters raise concerns about U S WEST's Petition in this regard, none of them explain how grant of the limited relief requested by U S WEST would harm competition. AT&T, for example, argues that granting a waiver of the unbundling rules would allow incumbents to preserve their monopoly power, but it completely ignores the Computer III and 1996 Act requirements that will remain in place.[53] Likewise, other commenters argue that competitors must have access to DSL services without explaining how grant of U S WEST's Petition would deprive them of such access.[54]

U S WEST's Petition is carefully structured to ensure that competitors will be able to provide their own DSL services. In particular, granting U S WEST's request for relief from the obligation to sell its advanced services at an avoided-cost discount will have no effect on its general obligation to permit purchasers to resell those services. Likewise, granting U S WEST's request for relief from having to unbundle the non-bottleneck data facilities used in the provision of DSL service will

[53] AT&T's argument here is particularly silly. As the services which are at issue here generally do not exist, at least not for U S WEST, U S WEST has no monopoly power to maintain, even if so motivated.

have no effect on U S WEST's obligation to unbundle loops and other facilities used to provide that service. The opposing commenters also ignore the fact that the underlying elements of U S WEST's DSL service will remain available to ISPs through tariffs on a non-discriminatory basis, as required by the Commission's Computer III rules.

Clearly, U S WEST's request for regulatory relief will not have any harmful effect on competition in the DSL market. Any CLEC will still be able to obtain unbundled loops from U S WEST and provide its own DSL service, so long as the loops are qualified for DSL service. MCI and others concede this outright.[55] U S WEST has committed to conditioning these loops as necessary to facilitate the provisioning of DSL service. Combined with collocated U S WEST central office space, the CLEC can provide competitive DSL service of its own. In fact, there are a number of CLECs and ISPs -- many of them relatively small -- that have already deployed their own DSL services.[56] This number will certainly continue to increase steadily should the U S WEST Petition be granted.

For those CLECs that do not wish to construct a collocation cage in a U S WEST central office, U S WEST will deliver the CLEC's unbundled network

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[54] MCI at 8; Sprint at 11-12.

[55] See, e.g., MCI at 10, n.3 ("[C]ompetitive local exchange carriers can efficiently provide DSL technologies as sufficiently as U S WEST and the other BOCs. . . . A CLEC can place the DSLAM in a collocated space in the BOC's CO just as readily as the BOC can place the DSLAM in its CO. Upfront investment costs to the provider are low.").

[56] ADSL Forum has identified more than 30 ILECs, CLECs and ISPs that expect to deploy DSL service commercially by the end of the year. See www.aDSL.com/trial_matrix.htm.

elements to a Single Point of Termination ("SPOT") bay located in the central office. The CLEC will have access to the central office for the purposes of combining unbundled network elements into a finished service. A CLEC can use the SPOT bay collocation option to connect its DSL equipment to a conditioned loop that has been approved for DSL services. U S WEST's cageless collocation option allows the CLEC to eliminate the high cost of building a cage and permits the provider to install racks on an individual basis. In a recent speech, Commissioner Tristani's recognized that the concept of "cageless collocation" is a means of promoting competition.[57] Indeed, one new entrant has said that more efficient collocation procedures could determine whether smaller towns ever see the benefits of facilities-based competition.[58]

Several commenters question U S WEST's motivation in withdrawing Local Area Data Service ("LADS") from state tariffs in 1997, in light of the subsequent deployment of DSL services.[59] That is a non-issue. LADS was a point-to-point private line service that was designed to be used for voice (e.g., off-premise extensions, signaling circuits) and some low-speed computer connections. It was not designed for high-speed data services, and suffered a number of technical drawbacks -- most notably, an inability to be tested and monitored remotely -- that prevented U S WEST from being able to guarantee facilities of a sufficient quality

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[57] Remarks of Commissioner Gloria Tristani before the U S WEST Regional Oversight Committee, "Section 706: An Opportunity for Broadband Competition Policy," at 3, Apr. 27, 1998.

[58] Id.

[59] MCI at 26-28; ELI at 20-21; CIX at 18.

for high-speed data. As U S WEST previously explained, there was no hidden agenda behind the company's decision to phase out LADS over five years.[60] Rather, LADS was withdrawn because it met the needs of only a limited number of customers and demand for the service had been decreasing for several years.

The use of LADS as a vehicle through which high-speed data could be transmitted -- a use for which LADS was never intended -- would lead to service problems. LADS was essentially an inferior service provisioned over metallic facilities; unlike most services, LADS could not be remotely tested, meaning that U S WEST could not diagnose and fix a problem on a LADS circuit unless it actually visited the customer's premises. This prevented U S WEST from being able to guarantee or certify that the LADS circuit was of sufficiently high quality to be used for high-speed data services – something that competitive DSL providers such as Covad insisted they need.[61] This means that trouble with the circuit is difficult and expensive to diagnose and fix. U S WEST fully expected that customers would experience repair problems and general confusion if they used LADS with high-speed data equipment, which was clearly outside the design parameters of the service.

Most significantly, at least if read on a broad basis, LADS would be priced well below its cost. For example, an unbundled loop ordered by a CLEC,

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[60] In the Matter of the Application of U S WEST Communications, Inc. to Revise its Access Services Tariff to Grandparent Data Non-Load Service (Local Area Data Service - LADS), New Mexico State Corporation Commission, Docket No. 97-328-TC, Direct Testimony of Leo R. Baca, dated Aug. 8, 1997.

[61] Covad at 8, 10-11 (discussing need for "certified" DSL-compatible loops).

conditioned with no load coils, could be connected together in the central office to provide a service functionally equivalent to a LADS facility. In New Mexico, the average unbundled loop cost is $21.21 and the rate for each end of a LADS circuit is approximately $16.00. Raising the price of LADS to correspond to the unbundled loop price did not seem a good option, especially when U S WEST would never be able to remotely test and certify the DSL compatibility of the LADS circuit.. For all of these reasons the service has been withdrawn.

Despite some undocumented criticism, there is also no evidence that U S WEST seeks to provide DSL services in a manner which disadvantages ISPs. To the contrary, the company is actively (and successfully) marketing DSL services to third-party ISPs. Specifically, U S WEST's MegaCentral Service, which is targeted at the ISP market, allows any ISP to connect to its end-user customers at speeds up to 150 times faster than the speed of the average dial-up modem in today's state-of-the-art computer. An ISP can purchase MegaCentral in any central office where U S WEST offers DSL services, thereby obtaining the ability to sign-up its own DSL customers. The attractiveness of U S WEST's MegaCentral service is illustrated by the fact that in Phoenix, Arizona -- the first city in which U S WEST rolled out its DSL service -- there are already at least 12 ISP customers.[62] Technology companies such as Sun and Compaq,[63] and even forthright CLECs such as Sprint, recognize that enabling U S WEST to deploy DSL services more broadly allows all companies -- information service providers as well as carriers -- to offer

[62] See Attachment C (Internet ads advertising the availability of DSL service).

end users more sophisticated services. To quote from Sprint: "Such ILEC, in-region xDSL services would be highly valuable to CLECS, Internet access providers, and others in facilitating a whole new range of broadband services to end-user customers, both business and residential."[64]

It is also important to note that DSL is by no means the exclusive means of delivering high-speed data services to the home, at least in the larger cities. Commission Ness recently noted that there are many different technologies being deployed -- including DSL, cable modems, unlicensed wireless internet access, LMDS and satellite data services -- capable of providing broadband services.[65] For example, cable modems, which make use of existing cable plant from the cable system headend to the consumer's home, are capable of data rates in the millions to tens of millions of bits per second.[66] In Phoenix, DSL services compete directly with the @Home cable internet service offered by Cox Communications, the local cable provider.

Wireless technologies offer yet another alternative. Today, there are at least three wireless technologies available for internet access -- cellular digital packet

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[63] Sun MicroSystems at 4; Compaq at 6, 11.

[64] Sprint at 16.

[65] See Remarks of Commissioner Susan Ness before the Washington Web Internet Policy Forum at 3-4, Feb. 9, 1998.

[66] One cable ISP, @Home, offers connection speeds up to 1.5 to 3 million bits per second. See http://www.home.com/home/speed.html.

data ("CDPD"), Hughes DirectPC and Metricom's Ricochet service.[67] The range of wireless alternatives will continue to increase as WCS, LMDS and two-way MMDS licensees begin to deploy internet access services. In addition, the next generation of geostationary satellite systems, due to be operational in two to three years, will support high-speed two-way communications. Also on the horizon are low- and medium-earth-orbit satellite systems (e.g., Iridium and Skybridge) that will support voice and data communications. Thus, in those areas which competitors choose to serve, there is significant competition which, by itself, prevents anti-competitive behavior.

V. THE DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS NETWORKS WILL ALLEVIATE CONGESTION ON THE VOICE NETWORK, BUT IT WILL NOT SUPPLANT THE VOICE NETWORK

An important public interest benefit of U S WEST's Petition is that it will alleviate congestion on the circuit-switched voice network. As the Commission has recognized, data calls typically have much greater holding times than the voice calls for which the network was designed.[68] DSL service solves this problem by offloading data traffic to a separate packet-switched network, thereby contributing to the overall efficiency of the voice network.

At the same time, U S WEST is not seeking to supplant the voice network. A number of commenters attempt to create the impression that U S WEST is doing an end run around Section 271 and planning to offer voice service over DSL or to

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[67] "Initial Report on Regulation of LEC ADSL Services" by Robert A. Crandall and Charles L. Jackson filed by Keep America Connected in Comments on Rm-9844, the Alliance for Public Technology Petition.

migrate all of its high-volume voice customers to an unregulated broadband offering.[69] That is not true. In its Petition, U S WEST's requests relief only for its advanced data services. U S WEST will continue to fully comply with the statutory requirements for opening the local exchange to competition and obtaining authority for the provision of interLATA voice services. In fact, U S WEST recently made a Section 271 filing in Montana, and the company intends to make similar filings in its other states by the end of this year. U S WEST's actions clearly demonstrate its intent to comply with the applicable requirements for obtaining permission to provide interLATA voice services.

In any event, U S WEST represents that it will not market or sell telephone voice transmission over its high speed data network until such time as U S WEST obtains Section 271 authority or is otherwise permitted to participate in the provision of interLATA voice service. In short, U S WEST does not intend to migrate any voice traffic from the public switched telephone network to its data network. U S WEST's goal is exactly the opposite -- the company plans to move data transmissions off of the public switched telephone network in order to reduce the drain on its capacity and ensure smooth transmission and completion of voice calls.

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[68] U S WEST Petition at 26.

[69] See, e.g., Sprint at 8; AT&T at 6.

VI. THE COMMISSION SHOULD NOT REQUIRE ADVANCED TELECOMMUNICATIONS SERVICES TO BE OFFERED THROUGH INEFFICIENT SEPARATE SUBSIDIARIES

A number of commenters take the position that advanced telecommunications services must be offered through a separate affiliate that complies with the requirements of Section 272.[70] As an alternative to the burdensome structural separation requirements of Section 272, Ameritech suggested in its Petition that the Commission should adopt the less onerous separation requirements -- adopted in the Fifth Report and Order in the Competitive Carrier proceeding -- which apply to BOC long distance affiliates providing out-of-region service.[71] Such an affiliate would keep separate books of account, would not share switching and transmission facilities with the affiliated LEC, and would purchase telecommunications services or facilities from the affiliated LEC at tariffed rates.[72] Ameritech proposes that such an affiliate would be neither an ILEC nor a dominant carrier, and thus would not be subject to most of the burdensome rules that currently govern BOC operations.[73]

U S WEST believes that no separation requirements are necessary. U S WEST agrees that U S WEST and similarly situated ILECs should be required to offer their data transmission services in a manner that is fully accessible to all

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[70] See, e.g., Transwire at 5-6; Teleport at 11-13; CompTel at 16.

[71] Ameritech Petition at 18-19. And see In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Fifth Report and Order, 98 FCC2d 1191 (1984) ("Fifth Report and Order").

[72] Id. at 1198-99 ¶ 9.

ISPs. U S WEST noted this fact in its Petition, and has not requested that ONA be abolished in its recently-filed comments in the Computer III Remand proceeding.[74] Moreover, neither Ameritech nor U S WEST is seeking to lift the section 251(c) unbundling and resale requirements from those local exchange facilities that may be used to provide both voice and data.[75] These requirements are sufficient to ensure that grant of the instant waiver would not adversely affect competing ISPs or data providers. There is no need to impose an artificial separate subsidiary requirement as an additional safeguard.

Moreover, offering data services through a separate subsidiary -- even a Fifth Report and Order subsidiary as proposed by Ameritech -- in many cases would be impractical and inefficient. U S WEST's DSL services are offered over the same loop as U S WEST's voice service; indeed, many residences in U S WEST's territory are not provisioned with a second loop. As a practical and technical matter, there is no way to split a loop between voice services and DSL services. In fact, DSL service to residential end users is economically viable precisely because there are significant efficiencies involved in sharing the loop between the two types of service. Having separate entities provide voice and DSL services simply is not feasible.

In light of these considerations, the only way for U S WEST to comply with a separate subsidiary requirement and still offer DSL service to residential customers

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[73] Ameritech Petition at 25-26.

[74] U S WEST Comments, CC Docket Nos. 95-20 and 98-10, filed Mar. 27, 1998 in general. And see U S WEST Petition at 5, 51.

[75] Ameritech Petition at 18; U S WEST Petition at 48.

would be for U S WEST to create a subsidiary that offers both voice and DSL services using unbundled loops purchased from U S WEST. Such a subsidiary would operate as a CLEC, offering the same array of advanced telecommunications services and local exchange voice services that any other CLEC can offer today. But the problem with this approach is that state regulators have jurisdiction over most aspects of local exchange regulation. In order for U S WEST to offer voice local exchange service as a CLEC within a particular state, it would, in practically all instances, need the permission of the appropriate state regulatory authority. For the Commission to take action which, in effect, requires U S WEST to utilize a CLEC in its provision of both data and local exchange voice services, would demand a very serious review of the extent and scope of the Commission's power over local exchange services. U S WEST submits that, in the context of the instant waiver Petition, no such review is necessary because a regulatory subsidiary is not necessary.

If the Commission were to require a separate subsidiary, however, U S WEST agrees with Ameritech that the subsidiary should be a Fifth Report and Order affiliate, should not be an ILEC under the 1996 Act, and should be able to offer data services free of the unbundling and resale restrictions of Section 251(c) of the Act.[76] The Commission accepted a nearly identical premise when it ruled that Section 272 subsidiaries would not be treated as ILECs, even when they offered local exchange services, so long as network element facilities were not transferred

[76] Ameritech Petition at 25.

to the subsidiaries.[77] U S WEST also concurs with Ameritech's position that a Fifth Report and Order affiliate should be classified as a non-dominant carrier under the Commission's rules.[78] There is no reason why data services ought to be regulated as dominant carrier services. At the same time, however, the Commission must keep in mind that its duty to encourage innovation and investment requires it to consider the impact not only of regulations that would apply to a separate subsidiary, but also of regulations applicable to the ILEC itself. For example, it is critical that an ILEC not be subject to the unbundling and resale rules of Section 251(c) when it provides new services without the vehicle of an affiliate. New investment and innovation would be crushed if the potential innovator had to share its new facility at a cost-based rate or to share its new service with its competitor at a huge discount. There are a number of Sections of the 1996 Act which can help prevent such a result:

- The resale and unbundling sections of the statute, by their terms, apply only to ILECs. A company is an ILEC only to the extent that it is providing telephone exchange services. The advanced data and telecommunications services described in the Petitions are not telephone exchange services; hence, the rules do not apply to them. This issue is discussed above at Part II(B).
- It also seems self-evident that, in the case of advanced data and other new services, the failure of an ILEC to make a newly-constructed facility

[77] Id. at 24 (citing Section 251(h)).

available to a competitor at the price set for unbundled network elements could not possibly "impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer," as that standard is set forth in Section 251(d)(2) of the 1996 Act.[79] The Commission can simply announce that it will follow this interpretation of the Act should a competitor seek to obtain unbundled access to a new facility of an ILEC which could in fact be reasonably duplicated by the competitor or any other party willing to make the investment.

- To the extent necessary, the Commission can grant the U S WEST Petition for waiver of the unbundling and resale provisions of Section 251(c) as applied to data services.[80]

In short, even if the Commission imposes a separate subsidiary requirement, it still will have a responsibility to eliminate unnecessary regulation of data networks and data services offered by ILECs directly.[81]

VII. CONCLUSION

For these reasons, the Commission should act quickly to remove regulatory barriers that are depriving consumers and businesses throughout U S WEST's territory from receiving the affordable high-speed data services which they so

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[78] Ameritech Petition at 9, 21-22, 26-27.

[79] 47 U.S.C. § 251(d)(2)(B).

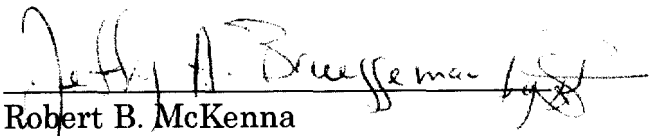
[80] U S WEST Petition at 44-48.

[81] In this regard, the study conducted by James Prieger and attached to the Ameritech Petition (at Attachment B) is especially compelling. Nothing in the Act

desperately need.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

By: 

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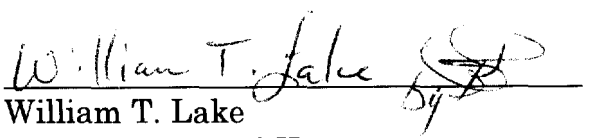
By: 

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even remotely hints that the Commission should be in the business of depriving customers of services.